

possibility in any given market that an all-market settlement would actually be negotiated, since only one applicant declining to settle would defeat a settlement and thus preserve the auction proceeding which must be protected from collusive bidding.

On the other hand, if settlements were unexpectedly to become the norm for PCS narrowband applicants, Congress' revenue-raising purpose for authorizing competitive bidding would be thwarted. The provisions of Section 309(j)(7) claimed by AIDE to support the proposition that Congress' revenue-raising purposes cannot be considered by the Commission have no such limiting purpose. Subparagraphs (A) and (B) of that section are, on their face, specific in their limited applicability to the FCC's assignment of bands of frequencies subject to competitive bidding and to the agency's consideration of alternative payment schedules and methods of calculation (see paragraph (4)(A)), respectively.

The Congress has strongly endorsed the use of competitive bidding in cases of mutually exclusive applications for frequencies designated by the Commission, including narrowband PCS. "If mutually exclusive applications are accepted for filing" in such proceedings, the Commission has full "authority" to use a competitive bidding system of selection among the applicants (47 U.S.C. § 309(j)(1)). This authority is not diminished in the situation at hand by the "rule of construction" that nothing in Section 309(j) shall "be construed to relieve the Commission of the obligation in the public interest to continue to use

engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings" (47 U.S.C. § 309(j)(6)(E); emphasis added). The Commission has determined that, when two or more Form 175 applications have been filed and until a single applicant has been selected through competitive bidding to file a Form 401 (and that applicant has made the requisite down-payment), it is not in the public interest to permit "negotiation" or agreements that would provide a cover for collusive activities in the auction process.

Therefore, there are no statutory or public policy reasons why the Commission may not preserve the integrity of the competitive bidding process and maximize government revenues at the same time -- both in the public interest -- by prohibiting settlements after Form 175 applications are filed. Section 24.429(b) regarding settlements must be read, in the light of Section 24.429(a), Section 24.422(b) and Section 1.2105, not to apply, regardless of whether partial or full-market settlement is being considered, during the pendency of Form 175 applications in a PCS proceeding.

In order to make this purpose more unmistakably clear, the Commission should amend Section 24.429(b) to read as follows (new language underscored):

(b) Policy. Parties to contested Form 401 application proceedings are encouraged to settle their disputes among themselves. Parties which, under a settlement agreement,

apply to the Commission for ownership changes or for amendment or dismissal of either pleadings or applications, shall at the time of filing notify the Commission that such is the result of an agreement or understanding.

The amended rule would continue to permit parties that petition to deny Form 401 applications the opportunity to settle their disputes with the applicants, subject to the Commission's well-established policy that dismissed parties may not receive more than their legitimate and prudent litigation expenses in non-merger settlements. ^{13/}

VI. CONCLUSION

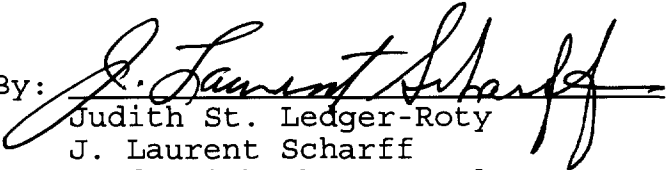
In view of the foregoing, the Commission should deny the petitions for reconsideration insofar as they seek (1) to retain single round sealed bids for 12.5 kHz unpaired response channel narrowband PCS licenses, (2) to grant specified designated entities an entitlement to a 25% bidding credit for the response channels, (3) any competitive bidding preferences for rural telephone companies or any additional preferences for small businesses, and (4) a rule interpretation permitting settlement discussions during the pendency of Form 175 applications in PCS proceedings. Instead of single round sealed bids, the Commission should adopt oral sequential auctions for the 12.5 kHz response channels. Also, instead of permitting unrestricted settlement discussions, the Commission should amend Rules Section 24.429(b)

^{13/} See Rules Sections 22.927 and 22.928 (dismissals of petitions to deny and applications in cellular radio proceedings).

to limit the applicability of that rule to the auction-winning applicants and other parties in Form 401 application proceedings.

Respectfully submitted,

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July 11, 1994

Table 1. A Sample Two-Day MTA Response Channel Auction Schedule

Time	MTA	% of Mhz-Pops Allocated
8 am	New York Los Angeles San Francisco	23
11 am	Chicago Detroit Charlotte Boston	20
2 pm	Philadelphia Washington Atlanta Minneapolis Tampa	14
4 pm	Miami Houston New Orleans Cleveland Cincinnati St. Louis	12
8 am	Milwaukee Pittsburgh Denver Seattle Richmond Phoenix Louisville Memphis	12
11 am	Birmingham Portland San Antonio Indianapolis Des Moines Kansas City Buffalo Salt Lake City	10
2 pm	Jacksonville El Paso Columbus Little Rock Oklahoma City Spokane Nashville Knoxville	7
4 pm	Omaha Honolulu Wichita Tulsa Alaska Puerto Rico Guam American Samoa	3

CERTIFICATE OF SERVICE

I, Courtenay P. Adams, hereby certify that a copy of the foregoing "***Opposition of Paging Network, Inc. to Petitions for Reconsideration of Third Report and Order***" was sent, this 11th day of July 1994, by first class U.S. mail, postage prepaid, to the following individuals:

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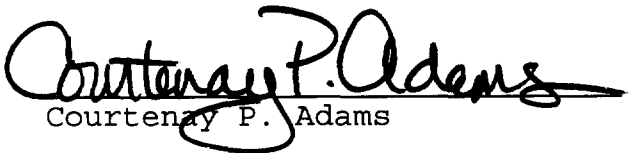
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